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I hereby certify that the *attached* correspondence comprising: 1). Declaration under 37 CFR §1.131 (6 pages) w/attachments (85 pages) is being deposited with the United States Postal Service "Express Mail Post Office to addressee" in an envelope addressed to: Mail Stop: Non-Fee Amendment, Commissioner for Patents, Alexandria, VA 22313-1450, on December 22, 2003

Kathy Raymond
Kathy Raymond

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :	Anthony J. Ruggiero	Docket No. :	IL-9928
Serial No. :	09/877,961	Art Unit :	1753
Filed :	06/08/2001	Examiner :	Kaj K. Olsen
For :	CHEMICAL MICRO-SENSOR		

DECLARATION UNDER 37 CFR §1.131

Declaration of Eddie E. Scott of

Prior Invention by Anthony J. Ruggiero to Overcome Cited Patent

Commissioner of Patents and Trademarks
Alexandria, VA 22313-1450

Dear Sir:

I, Eddie E. Scott, hereby declare that:

- (1) I am the attorney representing the inventor, Anthony J. Ruggiero, named in the subject application and the owner of the application, the University of California;
- (2) I am a citizen of the United States and a resident of Danville, California;
- (3) My education includes: Bachelor of Science Degree, University of Wyoming; Master of Science Degree, University of Texas at Dallas; Juris Doctor

Degree, University of Wyoming; Patent Office Academy, Basic and Advanced, United States Patent and Trademark Office, Washington, D. C.;

(4) I am an active member of the State Bar of California, an inactive member of the State Bars of Texas and Wyoming, and I am registered to practice before the United States Patent and Trademark Office;

(5) I am employed by the University of California, at the Lawrence Livermore National Laboratory, Livermore, California, as Assistant Laboratory Counsel, having been employed by the University of California, at the Lawrence Livermore National Laboratory from May 1, 1999 to the present, and I am empowered to act on behalf of The Regents of the University of California, the owner of the subject application;

(6) The claims in the subject application were rejected over the primary reference, U.S. Patent No. 6,381,025 (Bornhop et al. Reference) and another secondary reference; the primary Bornhop et al. Reference issued April 30, 2002 from an application filed March 6, 2000 and was based upon a provisional application filed on August 19, 1999; therefore, August 19, 1999 is the earliest effective date of the Bornhop et al. Reference;

(7) I have obtained copies of certain documents (The Documents) maintained in the ordinary course of business of the University of California, the Lawrence Livermore National Laboratory, and the United States Department of Energy (DOE) and I am one of the custodians of The Documents; copies of The Documents are attached hereto;

(8) The Documents included as exhibits to my declaration have the dates blacked out as provided for in MPEP § 715.07;

MPEP § 715.07 Facts and Documentary Evidence - ESTABLISHMENT OF DATES, provides, "If the dates of the exhibits have been removed or blocked off, the matter of dates can be taken care of in the body of the oath or declaration.

When alleging that conception or a reduction to practice occurred prior to the effective date of the reference, the dates in the oath or declaration may be the actual dates or, if the applicant or patent owner does not desire to disclose his or her actual dates, he or she may merely allege that the acts referred to occurred prior to a specified date;"

I believe the procedure of blacking out the dates is desirable to protect the Applicant's rights because the actual dates may become important in later proceedings and it would be detrimental for me to disclose exactly how early are Tony J. Ruggiero's dates;

(9) The Documents show that The Inventor, Anthony J. Ruggiero, made the invention described and claimed in the subject patent application (hereinafter "The Invention") in this country prior to August 19, 1999; that Anthony J. Ruggiero conceived The Invention in this country prior to August 19, 1999; that Anthony J. Ruggiero made written descriptions of The Invention in this country prior to August 19, 1999; that Anthony J. Ruggiero disclosed The Invention to others in this country prior to August 19, 1999; that Anthony J. Ruggiero reduced The Invention to practice in this country prior to August 19, 1999; and that Anthony J. Ruggiero continuously worked on testing, developing, and patenting The Invention during the period from the time when he made the first written description of The Invention and disclosed The Invention to others until 06/08/2001 when the subject application was filed (hereinafter "The Time Period");

(10) The Inventor, Anthony J. Ruggiero, completed a "RECORD OF INVENTION," ATTACHMENT A is photostatic copy of the "RECORD OF INVENTION," the entries for the dates on ATTACHMENT A have been blacked out; however, the dates are prior to August 19, 1999;

(11) The photostatic copy of the "RECORD OF INVENTION" (ATTACHMENT A) includes includes three attachments and the entries for the dates on the three attachments have been blacked out; however, the dates are prior to August 19, 1999;

(12) The photostatic copy of the "RECORD OF INVENTION" ATTACHMENT A, in the Conception Date Place, Section X, contains an entry for the "Conception Date," the entry has been blacked out; however, the entry is prior to August 19, 1999 and the "Conception Place" entry LLNL is in this country (USA);

(13) The photostatic copy of the "RECORD OF INVENTION" (ATTACHMENT A) also includes sections showing that Anthony J. Ruggiero made The Invention in this country prior to August 19, 1999, that Anthony J. Ruggiero made written descriptions of The Invention in this country prior to August 19, 1999, that Anthony J. Ruggiero disclosed The Invention to others in this country prior to August 19, 1999, that Anthony J. Ruggiero reduced The Invention to practice in this country prior to August 19, 1999, and that testing, developing, and patenting of The Invention was continuously worked on during The Time Period;

(14) The Invention was tested prior to August 19, 1999 and The Invention was reduced to practice in this country prior to August 19, 1999, the "RECORD OF INVENTION" (ATTACHMENT A) includes section XI. Reduction to Practice with entries for Date first model completed and Date of operation and testing, the entries have been blacked out; however, the entries are prior to August 19, 1999, the results of testing of The Invention were prior to August 19, 1999 and The Invention was to reduced to practice in this country prior to August 19, 1999; the dates on the photostatic copies have been blacked out, however, the dates are prior to August 19, 1999;

(15) During The Time Period the Industrial Partnership and Commercialization Office (IPAC) of the Lawrence Livermore National Laboratory held monthly Invention Review Meetings and The Invention was reviewed at the Invention Review Meetings during The Time Period; IPAC continuously reviews inventions and prioritizes inventions for patent application filing; The Invention was reviewed and prioritized by IPAC during The Time Period; photostatic copies of a database entries showing that The Invention was reviewed by IPAC during The Time Period are attached as Attachments B, C, and D;

(16) During The Time Period the Office of Laboratory Counsel (OLC) of the Lawrence Livermore National Laboratory, held monthly Invention Review Meetings and The Invention was reviewed at the Meetings during The Time Period; the Office of Laboratory Counsel (OLC) also held monthly meetings with the Industrial Partnership and Commercialization Office (IPAC) during The Time Period and The Invention was reviewed at the Meetings; OLC prepares patent applications for filing according to a priority list; the parent application of the subject application was prepared by OLC covering The Invention according to the priority list; photostatic copies of a database entries showing that The Invention was reviewed and a patent application filed by OLC during The Time Period are attached as Attachments E, F, G, H, I, J, and K;

(17) During The Time Period The Invention was continuously worked on; photostatic copies of documents maintained in the ordinary course of business of the University of California, the Lawrence Livermore National Laboratory, and the United States Department of Energy (DOE) showing that The Invention was continuously worked on during The Time Period are attached as Attachments L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AB, and AC;

I met with the inventor, Anthony J. Ruggiero, during the preparation of the patent application and sent drafts of the patent application to the inventor, Anthony J. Ruggiero, for his review and comment;

Because of the complexity of the invention I ask for and received assistance from another patent attorney, Ann Lee, and another scientist, Gary Johnson; I met with Ann Lee and Gary Johnson and discussed drafts of the patent application and sent drafts of the patent application to Ann Lee and Gary Johnson for their input; I met with a patent draftsman, Don Lambert, and discussed the preparation of the patent drawings and provided a copy of a draft of the patent application to the patent draftsman, Don Lambert;

(18) I do not know and do not believe that the invention has been in public use or on sale in this country, or patented or described in a printed publication in this or any foreign country for more than one year prior to the application, and I believe the inventor has never abandoned his invention;

(19) I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

(Signature)



Declarant: Eddie E. Scott

Dated: December 19, 2003
Livermore, California